in the **Peisner and Disman** case was obscene literature. Little more than possession was sufficient to justify a conviction under the federal statute.

Further, in the Jones case, the proof showed that the defendant had a key to the apartment searched and was exercising a certain amount of control over it. A short time before the search, the officers had seen the petitioner place an awning upon the apartment. In the **Peisner** case, Disman was observed with Peisner in the act of placing the contraband (obscene literature) in the automobile searched. These circumstances are sufficient to indicate the search was in fact made against the defendants, whereas in the present case, the search was directed against the owner of the car. The evidence obtained by itself had little or no probative value against the petitioner because it was not shown that he had any control of the car, that he had been in it for any particular length of time, nor that he had any intention of continuing to remain in the car. Nor had he been seen in connection with the stolen property prior to the making of the search as was true of Disman in the **Peisner** case.

The distinction between the case under consideration and the two cases relied upon by counsel for the petitioner in support of their request for writ of certiorari is well pointed out and illustrated by the circumstances and the statement made by the United States Court of Appeals, Third Circuit, in the case of **United States v. Konigsberg**, 336 F. 2d 844, in the following words:

> "In Jones, by statute, proof of possession was enough to convict. The controlling law of this appeal has no such provision or intimation. Possession is only one element of the crime charged. The theft, interstate commerce, knowledge of the theft and value of the stolen clothes all were matters of proof by the Government without which the charge would fall as a matter of law. The Jones rule governs as of course

in a proper case. It is not applicable to the issue before us. Cf. United States v. Romano, 203 F. Supp. 27, 30-31 (D. C. D. Conn. 1962). Ramirez v. United States, 294 F. 2d 277 (9 Cir. 1961)."

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## CONCLUSION.

In view of the foregoing, it is respectfully requested that the writ of certiorari in this case not be granted. The reason offered for granting the writ is to the effect that the holding of the Tennessee Supreme Court in this case is in conflict with the **Jones** case, supra, and other federal cases, but when properly analyzed, these cases are distinguishable from those two cases as shown by the **Konigsberg** case.

Respectfully submitted,

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I certify that I forwarded a copy of this Reply to Petition for Writ of Certiorari to the Honorable James H. Bateman, Attorney at Law, Stahlman Building, Nashville, Tennessee, on this the 1st day of February, 1965.

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